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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 61

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JOSEPH T. STRONG, d/b/a STRONG ROOFING AND INSULATING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (R. 124–131) is reported at 386 F. 2d 929. The decision and order of the National Labor Relations Board (R. 108–123) are reported at 162 NLRB 9.

JURISDICTION

The decision of the court of appeals was entered on July 14, 1967 (R. 124). The Board's timely petition for rehearing *en banc* was denied on January 18, 1968 (R. 131), and a decree was entered on February 19, 1968 (R. 132–135). The petition for a writ of

certiorari was filed on April 17, 1968, and was granted on May 27, 1968 (R. 136). The jurisdiction of the Court rests on 28 U.S.C. 1254(1), and Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), and of the Labor Management Relations Act (61 Stat. 136, 29 U.S.C. 141, *et seq.*) are set forth in the Appendix, *infra*, pp. 19–20.

QUESTION PRESENTED

Whether the National Labor Relations Board, upon finding that an employer committed an unfair labor practice by refusing to execute a collective bargaining agreement negotiated on his behalf by a multi-employer group, may require the employer retroactively to pay certain benefits that he would have paid had he signed the contract.

STATEMENT

Respondent Joseph T. Strong is engaged in the roofing of residential and commercial buildings (R. 111; 24). As a regular member of the Roofing Contractors Association of Southern California, Strong was bound by any collective bargaining agreement between the Association and the Union,[1] which represented a multi-employer bargaining unit comprised of the employees of the Association's regular mem-

[1] Roofers Local 36, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association.

bers (R. 112–113; 7, 20–21).[3] On August 14, 1963, the Association and the Union agreed upon the terms of a new four-year contract, to be effective from August 15, 1963, to August 15, 1967 (R. 111–112; 9, 19). Among other things, the contract required each employer to make certain payments to various union trust funds (a health and welfare fund, a fund for vacation benefits, and an apprenticeship and training fund); part of these fringe-benefit payments were deducted from the employees' wages, and the remainder was contributed by the employer, based on the hours worked by his employees (R. 63–70).

On August 20, 1963, Strong wrote to a grievance board composed of contractor and union representatives, requesting termination of the contract and the refund of his security deposit (R. 114–115; 14, 24–25).[3] In September 1963, Strong asked the Association to change his status from that of a regular member to that of an associate contractor (R. 115; 8).[4] He con-

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[3] The Association's By-laws provide (R. 35):

> Each and every regular member shall recognize the Association, its counsel, and each of its duly selected labor committees as the member's exclusive bargaining representatives for negotiating, reaching, agreeing to abide by, and/or signing any and all collective bargaining agreements with labor unions. * * * Any such labor contract negotiated by the Committee shall be binding upon the regular members of this Association separately and collectively.

[3] The agreement required that regular members deposit $400 with the Association to insure payment of wages and fringe benefits due under the contract (R. 115; 8, 14, 45).

[4] Under the By-laws of the Association, associate contractors are members who operate non-union shops and are not covered by the Association's collective bargaining agreement (R. 112; 15, 35).

tinued, however, to pay regular members' dues until December of that year, and also paid fringe benefits in September and October of 1963 (R. 115; 8, 28, 31-32, 36-37). On October 18, 1963, a Union representative asked Strong's wife, who managed his office, to have Strong sign the new Association contract (R. 116; 32). Mrs. Strong stated that her husband had withdrawn from the Association and would not sign (*ibid*). In December 1963 and in April 1964 Strong and his wife again rejected Union requests that he sign the contract (R. 116-23, 27-28).

On June 3, 1964, the Union filed unfair labor practice charges with the Board, alleging that Strong's refusal to sign the new Association contract constituted a refusal to bargain, in violation of Section 8(a)(5) and (1) of the Act. A complaint was issued on these charges. (R. 110.)

Although it recognized that as a general matter, employers may withdraw from multi-employer bargaining units, the Board found that in this case Strong had not made a timely withdrawal, but had continued as a member of the Association while the 1963 agreement was being negotiated (R. 117). It accordingly found that his subsequent withdrawal was not effective to relieve him of the duty to sign. Thus it found that his refusal, on and after April 1964, to sign and honor the 1963 Association agreement constituted a refusal to bargain with the Union, in violation of Section 8(a)(5) and (1) of the Act (R. 116-118). The Board ordered Strong to cease and desist from the unfair labor practices found, to execute and honor the

agreement, to pay to the appropriate source any fringe benefits provided for in the contract, and to post appropriate notices (R. 118–121).

The court of appeals affirmed the Board's finding of an unfair labor practice and enforced its order, except for the requirement that Strong retroactively pay the fringe benefits provided for in the contract (R. 124–131). As to that provision, the court reasoned (R. 130):

> In general, the Board has no power to adjudicate contractual disputes. * * * Here the unfair labor practice was the refusal to bargain by refusing to execute the contract. The order of the Board requiring the payment of fringe benefits to the appropriate source is an order to respondent to carry out provisions of the contract and is beyond the power of the Board. * * *

We petitioned for certiorari in view of the conflict with decisions of other courts of appeals, which held that the Board may direct the retroactive payment of benefits for which a collective bargaining agreement provides. See *National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 767–768 (C.A. 5); *National Labor Relations Board* v. *Huttig Sash and Door Co.*, 362 F. 2d 217 (C.A. 4); *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 384 F. 2d 696 (C.A. 2). This Court granted the writ on May 27, 1968 (R. 136).

SUMMARY OF ARGUMENT

The National Labor Relations Act provides the Board with authority, upon finding an unfair labor

practice, to direct such relief as is necessary to restore "the situation, as nearly as possible, to that which would have obtained but for the" violation. *Phelps-Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 194. The *status quo ante* cannot effectively be restored in a case such as this unless the Board may direct the restoration of fringe benefits past due under a contract an employer unlawfully refused to execute. Otherwise the employer gains a windfall from his unlawful act.

The fact that the fringe benefits are derived from a collective bargaining agreement does not divest the Board of authority to direct retroactive payment. Although the Board is not a proper forum for enforcing a collective bargaining agreement as such, once an unfair labor practice deprives employees of some of the benefits of the contract, the Board may refer to the terms of the agreement for the proper measure of relief.

The public interest in deterring violations of the labor statute requires that the Board have this authority. The 1947 Congress, in adopting section 301 of the Labor Management Relations Act, expressly recognized that either the courts or the Board would be a proper forum for remedying an action that was both an unfair practice and a violation of a collective bargaining agreement. Four decisions of this Court also recognize that the two remedies are cumulative or equally available alternatives. The principle applies here, and the court of appeals should be directed to enforce the Board's order in its entirety.

ARGUMENT

THE BOARD'S POWER TO REMEDY UNFAIR LABOR PRACTICES ALLOWS IT TO DIRECT THE RETROACTIVE PAYMENT OF FRINGE BENEFITS THAT WOULD HAVE BECOME DUE UNDER THE COLLECTIVE BARGAINING AGREEMENT THAT RESPONDENT UNLAWFULLY REFUSED TO EXECUTE AND HONOR

The court below sustained the Board's finding that respondent violated his duty to bargain, imposed by Section 8(a) (5) and (1) of the National Labor Relations Act, when he refused to sign and honor the 1963 agreement that the Association had negotiated for the multi-employer bargaining unit to which respondent then belonged.[5] Once the violation was found, the Board had the authority—and the duty—to fashion a remedy that effectively would undo the wrong. The only issue before this Court is the propriety of the remedy the Board chose here for the purpose of rectifying respondent's refusal to sign the agreement.

1. Section 10(c) of the Act empowers the Board, upon finding an unfair labor practice, to issue an order requiring the guilty party to cease and desist from the illegal conduct and—

> to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

The remedy should restore "the situation, as nearly as possible, to that which would have obtained but

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[5] This Court denied respondent's petition for certiorari based on that finding. *Strong* v. *National Labor Relations Board*, 390 U.S. 920. The only question presented was whether the Board's finding was barred by the 6 month limitations period of Section 10(b) of the Act, 29 U.S.C. 160(b).

for the [unfair labor practices]." *Phelps-Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 194. An unfair labor practice, including a refusal to bargain, may take an infinite variety of forms and be equally varied in its effects. In a line of cases dating virtually to the inception of the modern Labor Act, this Court has continually emphasized the breadth of the Board's authority to mold a remedy to fit a particular violation and undo its ill effects.[6] What the Board ordains will not be set aside "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to

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[6] See, *e.g.*, *Fibreboard Corp.* v. *National Labor Relations Board*, 379 U.S. 203, 216 (employer ordered to resume maintenance work "contracted out" without bargaining with the union, and to reinstate affected employees with back pay); *National Labor Relations Board* v. *Newsport News Shipbuilding & Dry Dock Co.*, 308 U.S. 241, 250 (disestablishment ordered of labor organization in whose formation employer had unlawfully interfered); *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 361–366 (employer ordered to cease giving effect to individual contracts secured through unfair labor practices, and to notify employees they were released from obligations imposed by those contracts); *Virginia Electric Co.* v. *National Labor Relations Board*, 319 U.S. 533, 538–544 (dues paid to employer-dominated labor organization reimbursed to employees from whose wages they had been withheld under closed-shop, check-off arrangement); *Int'l Ladies' Garment Workers' Union* v. *National Labor Relations Board*, 366 U.S. 731, 735, 736, 739–740 (employer ordered to withdraw recognition from union that lacked majority support when originally recognized, and to cease giving effect to collective bargaining agreement executed with that union after it had secured majority); *Franks Brothers* v. *National Labor Relations Board*, 321 U.S. 702 (employer ordered to bargain with union, notwithstanding its loss of majority, where such loss was attributable to the employer's unfair labor practices).

effectuate the polices of the Act." *Fibreboard Corp. v. National Labor Relations Board*, 379 U.S. 203, 216, quoting from *Virginia Electric Co. v. National Labor Relations Board*, 319 U.S. 533, 540.

In this case, effective relief had to include—as the Board's order did—a direction that respondent execute and honor the 1963 Association contract (R. 120, par. 2(a)). That requirement insured respondent's employees all the benefits of the contract, including the fringe benefits, for the last 29 months of its four-year term.[7] The cease and desist portion of the order (R. 120, par. (b)) guards against a future refusal on respondent's part to honor its duties under the Labor Act. But, if the remedy must stop here, as the court of appeals held, respondent would reap a substantial advantage from his unlawful refusal to bargain. He would not have avoided paying the fringe benefits for the first year and a half of the contract term. By requiring respondent to "[p]ay to the appropriate source any fringe benefits provided for in the [Association] contract" (R. 120, par. 2(b)), the Board sought to deprive respondent of such a windfall; no other form of order could result in a full "restoration of the situation as nearly as possible to that which would have obtained" if respondent had signed the agreement when and as the law required.

2. There is nothing in the nature of fringe benefits—either generally or the specific vacation, welfare, and

[7] The Board's decision and order issued on April 19, 1965 (R. 1). The contract, by its terms, was due to expire on August 15, 1967 (R. 62, Art. X).

apprenticeship programs at issue here—that takes them beyond the ambit of Board orders. Section 10(c) of the Act, for example, expressly speaks of the Board taking "such affirmative action including reinstatement of employees *with or without back pay*, as will effectuate the policies of this Act * * *." (Emphasis supplied.) It surely could not be doubted that if respondent had unlawfully discharged employees, the Board could have directed him to rehire them, and pay them full back wages, including an amount intended to compensate for the loss of fringe benefits. The courts have indeed consistently enforced such orders.[8]

The only possible basis for declining to enforce the order in this case is that the fringe benefits are required by a collective bargaining agreement. And that was the view of the court of appeals. It said that the Board's order "requiring the payment of fringe benefits * * * is an order to respondent to carry out provisions of the contract and is beyond the power of the Board" (R. 130). Thus it reasoned that a private suit for violation of the collective bargaining agreement under Section 301 of the Labor Management Relations Act is the sole method of recouping the lost fringe

[8] See, *e.g.*, *National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 767–768 (C.A. 5); *National Labor Relations Board* v. *Huttig Sash and Door Co.*, 362 F. 2d 217, 219–220 (C.A. 4), enforcing 151 NLRB 470, 475; *National Labor Relations Board* v. *M & M Oldsmobile, Inc.*, 377 F. 2d 712 (C.A. 2), enforcing 156 NLRB 903, 917; *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 377 F. 2d 964 (C.A. 8), enforcing 154 NLRB 811, 812. See also *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 384 F. 2d 696 (C.A. 2).

benefits, and that the Board has no jurisdiction in the matter.

The Board, to be sure, does not have plenary jurisdiction over breaches of collective bargaining agreements.* If the matter complained of is a breach of a bargaining agreement and nothing more, the remedy lies exclusively through a civil suit in the courts. But if the breach of the agreement is itself an unfair labor practice, or if an unfair labor practice has the result of depriving employees of some of the benefits of the agreement (as happened here), the Board's remedial powers must allow it to take action that restores the benefits of the contract and therefore has the practical effect of enforcing its terms.

The national labor statutes are designed "to provide a means by which agreement may be reached with respect to" wages, hours, and working conditions. *NLRB* v. *C & C Plywood Corp.*, 385 U.S. 421, 427, quoting from *Terminal Railroad Assn.* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1, 6. Collective bargaining is the means provided, and the Act and Board are designed to function in a manner that encourages free bargaining and forestalls strife. The Board's

* In 1947, Congress rejected a proposal which would have made breach of a collective bargaining agreement as such an unfair labor practice, and provided instead a judicial remedy under Section 301. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 41–42, 1 Leg. Hist. of the Labor-Management Relations Act, 1947 (G.P.O. 1948) 545–546. The House Conference Report states that "[o]nce parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board," *id.*, at 42, 546; see also 93 Cong. Rec. 6443, 2 Leg. Hist. 1539.

power to compel restoration of the *status quo ante* is an essential ingredient of this concept. If the Board is limited to prospective orders, employers have every incentive to avoid bargaining and ignore contracts. This is particularly so here, where the Board is told that it may remedy only prospectively an unlawful refusal to execute a collective bargaining agreement. As the Fifth Circuit said in upholding the Board's authority to compel the restoration of fringe benefits past due under a contract an employer had unlawfully repudiated (*National Labor Relations Board* v. *George E. Light Boat Storage Co.*, 373 F. 2d 762, 768):

> A simple order to bargain in good faith would not be sufficient. To allow an employer unlawfully to repudiate a collective bargaining agreement at the small cost of being required, sometime in the future, to sit down and bargain with the union would encourage such violations of the Act. * * * The temptation to violate the Act in a situation where the employer would have everything to gain and nothing to lose could be overwhelming.

And the courts, until now, have agreed that the Board has full power to direct the restoration of amounts and benefits due under a contract, if the relief is in other respects appropriate.[10]

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[10] See, *e.g.*, *National Labor Relations Board* v. *Central Illinois Public Service Co.*, 324 F. 2d 916, 919 (C.A. 7); *National Labor Relations Board* v. *Scam Instrument Corp.* (C.A. 7), May 15, 1968, 68 LRRM 2280, 2281, 2282; *National Labor Relations Board* v. *United Nuclear Corp.*, 381 F. 2d 972, 979–980 (C.A. 10); *Overnite Transportation Co.* v. *National Labor Relations Board*, 372 F. 2d 765, 770 (C.A. 4), certiorari denied, October 9, 1967, 389 U.S. 838.

3. The statute and the legislative history demonstrate that the Board has jurisdiction to direct the retroactive payment of fringe benefits in the present circumstances. Section 10(a) of the National Labor Relations Act provides that the Board's power to remedy unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." This provision makes it plain that Section 301 does not preclude the Board from providing an additional remedy under the National Labor Relations Act, if the conduct involved also amounts to an unfair labor practice. So long as there has been an unfair labor practice, the presence of a contract does not restrict the Board's powers. To the extent that the terms of the contract define the impact of an unlawful refusal to execute it, a Board order and a suit under Section 301 are equally available remedies. Indeed, Congress had no fear that Section 301 would limit the Board's powers. On the contrary, it was thought necessary to emphasize that the presence of an unfair labor practice would not limit the courts' powers under Section 301. Thus, it was said in the House Conference Report accompanying the 1947 Act (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 52; 1 Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948) 556):

> By retaining the language which provides the Board's power under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when

two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies.

This existence of concurrent remedies is but a recognition of the different functions served by suits under Section 301 and Board orders in unfair labor practice proceedings. Section 301 was designed to provide the "necessary legal remedies" to protect the parties' rights under a collective bargaining agreement (*Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 449–456). The Board's primary concern is not the wrong done the individual, but the "public interest in effectuating the policies of the federal labor laws * * *." *Vaca* v. *Sipes*, 386 U.S. 171, 182, n. 8; see also *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432, 436–437.

When an unfair labor practice is committed, the public interest in the continuing effectiveness of the national labor policy requires the eradication of the unlawful act and all its progeny. Of course the remedy will almost always aid private parties and sometimes, as here, the private benefits will be those required by a contract. When the unfair practice is an unlawful refusal to sign and honor a contract, the terms of the contract provide the most accurate measure of the effect of the illegal act. And the public interest in curing and deterring unlawful labor practices can not be implemented unless the relief provides the employees with the full measure of the contractual rights of which they have been deprived.

4. On four separate occasions this Court has made clear that Section 301 does not foreclose the Board from dealing with subjects that are also covered by contracts. In the first three cases, the contentions were the opposite of those presented here—that Section 301 does not give the courts jurisdiction of disputes that might also be termed unfair labor practices. The Court disagreed, emphasizing that the remedies were cumulative, and not mutually exclusive. In *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, the Court commented (p. 101, n. 9):

> It is, of course, true that conduct which is a violation of a contractual obligation may also be conduct constituting an unfair labor practice, and what has been said is not to imply that enforcement by a court of a contract obligation affects the jurisdiction of the N.L.R.B. to remedy unfair labor practices, as such. * * *

The point was repeated in *Smith* v. *Evening News Assn.*, 371 U.S. 195, 197:

> In *Lucas Flour* as well as in *Atkinson* [v. *Sinclair Refining Co.*, 370 U.S. 238], the Court expressly refused to apply the preemption doctrine of the *Garmon* case; and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced

> by § 301, but it is not exclusive and does not destroy the jurisdiction of the court in suits under § 301. * * *

It was made for a third time in *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, 268.

Then in *National Labor Relations Board* v. *C & C Plywood Corp.*, 385 U.S. 421, the Court rejected the same idea as the Ninth Circuit advanced here—that the Board's domain ends where the courts', under Section 301, begins. The employer had instituted a generalized incentive pay system during the term of a collective agreement, without prior consultation with the union. The question whether this unilateral action violated Sections 8(a)(1) and (5) turned on whether it was authorized by a provision in the agreement permitting the setting of individual premium rates. The Ninth Circuit declined to enforce a Labor Board finding that the pay change was an unfair labor practice. On certiorari, this Court reversed, and rejected the theory that the Board enters the forbidden area of contract enforcement where it construes a contract provision in order to determine whether an unfair labor practice has been committed.

In *C & C Plywood*, the employer relied on the contract as a defense—the claim was that the contract authorized the unilateral raise. Here the Board referred to the contract for the proper measure of the remedy. But the governing principle is the same. In *C & C Plywood* the Board could not execute its responsibilities to determine whether there was an unfair practice unless it first construed the contract. Here the

Board could not provide a full remedy for the respondent's unlawful conduct without reference to the contract. Without restoration of the fringe benefits, the remedy would have been incomplete and inadequate. Reference to the contract was the only way the Board could (385 U.S. at 428) "enforce a statutory right which Congress considered necessary to allow labor and management to get on with the process of reaching fair terms and conditions of employment—'to provide a means by which agreement may be reached'."

Here, as in *C & C Plywood*, the contrary view of the court below would require a bifurcated proceeding. The Board would first determine the existence of a unfair labor practice. Then, after all avenues of administrative and judicial review of the unfair labor practice finding had been exhausted, the aggrieved party would have to resort to a state or federal court in order to obtain meaningful relief for the violation found. Even then, the employees would by no means be certain of relief, since the courts could well hold that there was no judicially enforceable obligation for the period when the employer was unlawfully refusing to sign, since, under controlling contract principles, there may not have been a contract until the employer was directed to sign the agreement, or in fact did so. Moreover, such a procedure, which might take several years, would delay vindication of statutory rights, and would be much more expensive than a single Board proceeding. "Congress cannot have intended to place such obstacles in the way of the

Board's effective enforcement of statutory duties." *C. & C. Plywood, supra*, 385 U.S. at 429, 430.[11]

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded to that court with instructions to enforce the Board's order in its entirety.

Respectfully submitted.

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JULY 1968.

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[11] The cases relied on by the court below (App. A, *infra*, p. 21) do not support its position. *George E. Lightboat, supra*, holds precisely to the contrary. And the Board's decision in *National Labor Relations Board* v. *Hyde*, 339 F. 2d 568, 572 (C.A. 9), enforcing 145 NLRB 1252, in which it rejected the Examiner's recommendation that the employer be ordered not only to "honor" but also to "comply" with the terms of the contract, is not inconsistent with its remedy in this case; the breadth of the Examiner's proposed order in *Hyde* would have required the Board to oversee the entire contract and determine whether the employer's subsequent performance satisfied all of its terms. See *George E. Lightboat, supra*, 373 F. 2d at 768, 769; see, also *Sheridan Creations, Inc., supra.*

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519; 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 10 * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such

person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act:

* * *

The relevant provision of the Labor-Management Relations Act (61 Stat. 136, 29 U.S.C. 141, *et seq.*) is as follows:

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

* * *

U.S. GOVERNMENT PRINTING OFFICE: 1960